



KREINDLER & KREINDLER LLP

TRADITION OF EXCELLENCE

750 Third Avenue  
New York, NY 10017-2703

(212) 687-8181

Fax: (212) 972-9432

www.kreindler.com

[nkushlefsky@kreindler.com](mailto:nkushlefsky@kreindler.com)

(212) 973-3448

July 11, 2011

Hon. Alvin K. Hellerstein  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Re: In Re World Trade Center Disaster Site Litigation  
21 MC 100 (AKH)

Dear Judge Hellerstein,

Pursuant to the Court's instruction at the April 15, 2011 conference, I am writing to provide the status of the 57 cases involving World Trade Center Litigation claimants who had previous claims in the first Victim Compensation Fund. I am also to suggest motion practice to resolve the "waiver" issue in cases that are not voluntarily dismissed.

As Your Honor will recall, we were waiting to learn if claimants in the first Victim Compensation Fund would be eligible for the Zadroga Act's re-opened Victim Compensation Fund for new or worsened injuries, in which case the plaintiffs would voluntarily dismiss their cases in the litigation and pursue a claim in the VCF.

On June 21, 2011, Special Master Sheila Birnbaum and the Department of Justice published proposed rules for the administration of the new Victim Compensation Fund for responders. Proposed Rule §104.22(e) states:

**(e) Amendment of claims. A claimant who has previously submitted a claim may amend such claim to include**

**(1) An injury that the claimant had not suffered (or did not reasonably know the claimant suffered) at the time the claimant filed the previous claim;**

**(2) A condition that the Special Master has identified and published in accordance with 104.21(a), since the time the claimant filed the previous claim, as a presumptively covered condition;**

California Office

707 Wilshire Boulevard, Los Angeles, CA 90017-3613  
Tel: (213) 622-6469 Fax: (213) 622-6019

Massachusetts Office

277 Dartmouth Street, Boston, MA 02116-2805  
Tel: (617) 424-9100 Fax: (617) 424-9120

- (3) An injury for which the claimant was previously compensated by the Fund, but only if that injury has substantially worsened, resulting in damages or loss that was not previously compensated; and**  
**(4) Claims for which the individual is an eligible claimant as a result of amendments contained in the James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111-347.**

Since this proposed rule was published, I have been communicating with the 57 plaintiffs to determine their wishes regarding the litigation, both by letter and telephone. As of today, 41 of the plaintiffs have stated that they want their cases dismissed based on the availability of the VCF for a supplemental claim. I expect to have answers from the most or all of remaining plaintiffs before the next conference.

There is an issue that may impact the ultimate decision by many (29 of the 41) plaintiffs to dismiss their cases. For them, the decision to voluntarily dismiss their claims is driven by the availability of the VCF for a supplemental claim, and the requirement that they dismiss any litigation in order to make a VCF claim. Under the Zadroga Act, a claimant with a settled claim has to have tendered a release before the date of the law's enactment. Proposed rule §104.61(c) states that the release has to have been tendered by January 2, 2011. At the time the Zadroga act was passed, a settlement with the Port Authority had been negotiated, and it was available to the plaintiffs with a prior VCF claim. Counsel for the plaintiffs tendered a release on their behalf prior to January 2, 2011 to preserve their VCF rights. Many of the plaintiffs then signed a Port Authority release after January 2, 2003. There is an open question as to the effect of this later signed release. I communicated with Special Master Birnbaum on Friday and she indicated that a decision will likely be announced this week as to whether the second release will affect their right to make a supplemental claim in the VCF. I will inform the Court as soon as the decision is announced.

If their VCF rights are preserved, the cases will be voluntarily dismissed. The attached addendum identifies the cases that will be voluntarily dismissed and those which will be dismissed if VCF rights are preserved notwithstanding the Port Authority release being signed. In the event that the Port Authority issue is resolved unfavorably, or any of the 57 plaintiffs otherwise elect to continue with the litigation, we are prepared to file appropriate motions to determine the rights of the plaintiffs with respect to the waiver. The defendants have raised the plaintiffs' prior VCF claim as an affirmative defense in their master answers. We propose motions to strike the affirmative defense. The basis for the motion may differ slightly case to case, but suggest a consolidated motion dealing with each case individually in a single pleading.

I expect to have answers from all plaintiffs by the July 25<sup>th</sup> conference.

Respectfully yours,

KREINDLER & KREINDLER LLP

By: \_\_\_\_\_

Noah H. Kushlefsky

NHK:rp

## **ADDENDUM**

### **CASES TO BE VOLUNTARITY DISMISSED**

Atlas, Sarah	07cv04868
Cervantes, Regina	06cv11639
Conti, Anthony	06cv08356
Cutrone, Joseph	06cv12727
Dadabo, John	09cv03335
Delano, Kevin	08cv06767
Kennedy, Donald	06cv10374
Libretti, Joseph	06cv12212
McGrory, Robert	05cv01282
Murphy, Brian	07cv10023
Murphy, Paul	06cv09152
O'Keefe, James	06cv14931
Owens, Girardi	06cv14065
Parker, Edward	06cv09829
Piatti, William	06cv14969
Reilly, Thomas	06cv12439
Revella, Terrence	07cv05150
Rivas, David	05cv01698
Wilson, Charles	06cv08882

### **CASES TO BE DISMISSED IF VCF RIGHTS PRESERVED**

Bigl, Donald	04cv09857
Cali, Gary	05cv01469
Cascio, Raymond	07cv10873
Clarke, Thomas	07cv04902
Coto, Mitchell	05cv09877
DeMartino, Jr., John	06cv06762
Doherty, Kevin	05cv01756
Estreicher, Richard	06cv12046
Finn, Andrew	06cv11665
Forras, Vincent	07cv05211
Gallo, Anthony	06cv13616
Gayer, Robert	07cv09027

Giaramita, Frank	06cv10764
Guise, Steven	07cv09028
Hanberry, Brian	06cv09075
Keegan, Bill	06cv08791
Mastros, Marc	07cv10803
McInerney, Timothy	05cv01371
Miano, Henry	06cv08473
Napoli, Joseph	07cv09154
Rizzi, John	07cv10831
Spencer, Brenda	07cv05085